

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
(Attorney Docket № 14189US02)**

In the Application of:

Richard Martin

Serial No. 10/658,450

Filed: September 9, 2003

For: System and Method for Access
Point (AP) Aggregation and
Resiliency in a Hybrid
Wired/Wireless Local Area
Network

Examiner: Kim, Wesley Leo

Group Art Unit: 2617

Confirmation No. 4742

Electronically filed on March 23, 2010

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The Applicant requests review of the final rejection in the above-identified application, stated in the final Office Action mailed on December 29, 2009 ("Final Office Action") with a period of reply through March 29, 2010. No amendments are being filed with this request. This request is being filed with a Notice of Appeal. The review is being requested for the reasons stated on the attached sheets.

REMARKS

The present application includes pending claims 1-28, all of which have been rejected. Claims 1-28 are rejected under 35 U.S.C. § 103(a) as being unpatentable over USP 6,032,194 (“Gai”), in view of USPP 2002/0085495 (“Jeffries”), and USP 6,005,884 (“Cook”). The Applicant respectfully submits that the claims define patentable subject matter and also traverses these rejections at least for the following reasons:

I. The Proposed Combination of Gai, Jeffries, and Cook Does Not Render Claims 1-28 Unpatentable

With regard to the rejection of independent claim 1 under 103(a), the Applicant submits that the combination of Gai, Jeffries and Cook does not disclose or suggest at least the limitation of “**the first access point group** is communicatively **coupled to** a first **default switch port** of said network switch”, as recited in Applicant’s claim 1.

The Examiner relies on Gai’s Fig. 1, and equates Gai’s access switch 114, root port 119 and designated port 118 of network switch 114 to Applicant’s “network switch”, “first default switch port” and “at least one available switch port”, respectively. Since Gai (see Gai at col. 2, lines 53-56) discloses that the access switch 114 (the alleged “network switch”) selects (the alleged “determination”) a port with the lowest cost path (i.e., fewest hops in the links) as the root port (the alleged “first default switch port”), and Gai’s designated switch port 118 (the alleged “available switch port”) connects to a LAN 102 without connecting to any access point, therefore, the Examiner concedes that Gai does not disclose “**determining, based on at least bandwidth-related information**, at least one available switch port on a network switch,” or “...at least one available **switch port** on a network switch **for handling a first access point group**,” as recited in Applicant’s claim 1.

The Examiner equates Jeffries’ selecting a network node based on largest available bandwidth to Applicant’s “**determining, based on bandwidth-related information**, one available switch port on a network switch...” The Examiner relies on

Cook's Fig. 1, which discloses a base station 10 (the alleged "first access point group") connected to a LAN 36, to allegedly disclose "...**at least one available switch port on a network switch, for handling a first access point group,**" as recited in Applicant's claim 1.

Even accepting the Examiner's position as true (which the Applicant does not concede), the Examiner's above arguments are still deficient, since Applicant's claim 1 also recites "**said first access point group is communicatively coupled to a first default switch port of said network switch**, and wherein said first default switch port is different from said at least one available switch port." Referring to Gai's Fig. 1, the **LAN 103** (i.e., allegedly handling "the first access point group") **is connected to** (allegedly "communicatively coupled to") **port 118** (the alleged "at least one available switch port"), **but not to the root port 119** (the alleged "first default switch port"). In other words, Gai **does not** disclose or suggest that the **LAN 103** (i.e., allegedly handling "the first access point group") **is connected to** (allegedly "communicatively coupled to") **the root port 119** (the alleged "first default switch port").

In addition, the Examiner is also referred to the arguments in the Applicant's 9/8/09 response, that Gai's "**root port**" 119 (the alleged "first default switch port") of the access switch 114, **is connected only to the root** (i.e., switches 122-125), i.e., **not to the LAN 102** (therefore not communicatively coupled to the alleged "first AP group").

Based on the above rationale, the Applicant maintains that the combination of Gai, Jeffries and Cook at least does not disclose or suggest "**said first access point group is communicatively coupled to a first default switch port of said network switch,**" as recited in Applicant's claim 1.

The Examiner in the Final Office Action (see page 3) argued that Applicant's "communicatively coupled to" may be broadly interpreted as "all of Gai's LANs are communicatively coupled to the alleged "first default switch port" (i.e., root port 119). The Examiner relies for support on the following citation of Gai:

“Significantly, for each access switch 114-116, only one port (local or trunk) that represents a path from the access switch to the root (i.e., provides connectivity to the root through links, shared media, switches, etc.) will be forwarding. All other ports (local or trunk) that represent paths from the access switch to the root will be blocked. In other words, only one port at each access switch 114-116 that provides connectivity to the root will be forwarding.”

See Gai at col. 11, lines 8-15 (emphasis added). **Gai discloses that the root port 119 (i.e., the alleged “first default switch port”) is the only port that forwards and connects to the root, i.e., the backbone switches 122-125** (see Gai at col. 8, lines 57-62). Gai clearly does not disclose or suggest that the root port 119 connects or couples to the LAN 102, as alleged by the Examiner. In this regard, Gai’s above citation contradicts the Examiner’s argument that Gai discloses or suggests **“said first access point group is communicatively coupled to a first default switch port of said network switch,”** as recited in Applicant’s claim 1.

Therefore, based on the foregoing rationale, the Applicant maintains that combination of Gai, Jeffries and Cook does not establish a prima facie case of obviousness to render independent claim 1 unpatentable, and claim 1 should be allowable. Independent claims 9 and 17 are similar in many respects to the method disclosed in independent claim 1, and therefore, are also allowable at least for the reasons stated above with regard to claim 1.

The Applicant maintains the remaining arguments stated in the 9/8/09 response to Office Action, and reserves the right to argue additional reasons to support the allowability of claims 1-28, should such a need arise.

CONCLUSION

Based on at least the foregoing, the Applicant believes that all claims 1-28 and are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and requests that the Examiner telephone the undersigned Patent Agent at (312) 775-8093.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

Date: March 23, 2010

/Frankie W. Wong/
Frankie W. Wong
Registration No. 61,832
Patent Agent for Applicant

McAndrews, Held & Malloy, Ltd.
500 West Madison Street, 34th Floor
Chicago, Illinois 60661
(312) 775-8093 (FWW)